

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0026P

Sales and Use Tax

For the Period October 1, 2000 through December 31, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Upon audit it was discovered that the taxpayer failed to remit use tax on clearly taxable items such as uniforms, office supplies, maintenance and janitorial supplies, and other miscellaneous items. Taxpayer also failed to obtain an exemption certificate from one of its customers and was given the opportunity to obtain the *Special Sales/Use Tax Exemption Certificate*, Form AD-70.

Taxpayer requests abatement of the penalty because it took immediate steps to correct the issues and has an excellent compliance history.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it has "instated" a use tax system for future capital purchases and has taken steps to correct the issues that led to the assessment.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each

taxpayer.”

Taxpayer was previously audited and failed to remit use tax due on clearly taxable items, primarily fixed assets, and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.

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